IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14764 of 2004
With
SPECIAL CIVIL APPLICATION No. 14767 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAHYABHAI BECHARBHAI CHOUDHARY - Petitioner(s)

Versus

DY COLLECTOR OFFICE OF STAMP DUTY VALUATION & 1 - Respondent(s)

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Appearance :
MR SANJAY M AMIN for Petitioner(s) : 1,
MS ARCHANA RAVAL ASST GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/12/2005

ORAL JUDGMENT

1. As the common question of law and facts arise in both these petitions, they are being disposed of by this common order.

2. So far as Special Civil Application No.14764 of 2004, the petitioner has challenged the legality and validity of the recovery of the notice issued by the Deputy Collector, Stamp Duty Valuation and Ex-officio Recovery Officer, Gandhinagar for recovery of the deficit stamp duty of Rs.3,40,210/- with respect to the Document Registration No.1418 dated 17.5.1996 presented before the Sub-Registrar, Kalol on the basis of the order passed by the Deputy Collector, Stamp Duty Valuation, Gandhinagar being Order No.8816 dated 25.2.2000.

3. So far as Special Civil Application No.14767 of 2004 is concerned, the petitioner has challenged the legality and validity of the notice issued by the Deputy Collector, Stamp Duty Valuation and the Deputy Mamlatdar and Ex-officio Recovery Officer, Gandhinagar with respect to the Document Registration No.1346 dated 9.5.1996 presented before the Sub-Registrar, Kalol for recovery of the deficit stamp duty of Rs.1,10,150/- on the basis of the order passed by the Deputy Collector, Stamp Duty Valuation,

Gandhinagar dated 2.6.2001.

4. It is the contention on behalf of the petitioners that the petitioner never purchased any land, of which, the registered sale deeds were executed and presented before the Sub-Registrar, Kalol being Document No.1418 dated 17.5.1996 and document registration No.1346 dated 9.5.1996 and inspite of that, the petitioner is saddle with liability and directed to pay deficit stamp duty and the petitioner is served with the notice for recovery under the provisions of the Bombay Land Revenue Code.

5. Shri Sanjay Amin, learned advocate appearing on behalf of the petitioner has submitted that in fact, on receipt of the aforesaid notices, the petitioner has immediately by representation dated 7.1.2002 (Special Civil Application No.14764 of 2004) and by representation dated nil which is at Annexure-B (Special Civil Application No.14767 of 2004) had requested the respondent authorities not to issue recovery notice on the petitioner as the petitioner had never purchased the land in question. However,

the respondents are serving notice upon the petitioner for recovery of the aforesaid amount and thereby, the petitioner is harassed unnecessarily.

6. Ms.Archana Rawal, learned AGP while opposing the present special civil applications and relying upon the affidavit-in-reply, more particularly, Para-4, 6 and 9 of the reply, has requested to dismiss the present special civil applications as so stated in the affidavit-in-reply, the aforesaid documents in question are registered with the office of the Sub-Registrar, Kalol in the name of the petitioner.

7. Heard the learned advocates for the parties.

8. It appears that considering the Documents Registration No.1418 and 1346, there appears name of the petitioner as the purchaser and proceedings under Section-32-A of the Bombay Stamp Act came to be initiated and final order came to be passed to pay the deficit stamp duty for Rs.3,41,210/- and Rs.1,10,150/- as involved in the respective petition. However, it is the contention of the petitioner that

the petitioner has never purchased the said property in question and has submitted application to that effect. Therefore, the respondents are required to hold necessary inquiry and consider the representations / applications submitted by the petitioner and to take an appropriate decision on that application. For that, the respondent is required to give a copy of the respective document in question to the petitioner so that the petitioner can also meet with the same and even the respondent authority is required to hold further inquiry or investigation from the other revenue authority with regard to the property in question whether the petitioner has any point of time taken any benefit of said documents or not and whether the petitioner has got his name mutated in the revenue record with regard to the land in question or not. For that purpose, the respondents may call upon the concerned Talati-cum-Mantri of the village concerned where the land is situated and hold necessary further investigation / inquiry as it deems fit.

9. Under the circumstances, the present special civil applications are disposed of directing the respondents to take an appropriate decision on the application submitted by the petitioner after giving an opportunity to the petitioner and supplying the copy of the documents in question and the respondents are directed to take an appropriate decision on the representation and / or application after holding necessary inquiry / investigation even from the concerned revenue authorities of the village where the land in question is situated. Such an exercise is to be done within a period of three months from the date of receipt of this order and until then, the parties are directed to maintain status quo with regard to recovery in question and further proceedings may be initiated on the basis of the decision that may be taken by the appropriate authority after holding necessary inquiry / investigation and the decision that may be taken on the representation and / or application submitted by the petitioner.

10. Rule is made absolute to the aforesaid in each of the matter, however, there shall be no order as to costs.

[M.R.Shah, J.]

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